10 *Official Opinions of the Compliance Board* 1 (2016)

- **2(E)(3) FAILURE TO GIVE TIMELY NOTICE: VIOLATION**
- **3(B) OPEN MEETING REQUIREMENT, PRACTICES PERMITTED: FOLLOWING SECURITY PROCEDURES FOR THE BUILDING WHERE THE MEETING IS HELD**
- **6(B)(1) MINUTES, GENERALLY: TEMPORARY PUBLIC BODY REQUIRED TO ADOPT MINUTES OF LAST MEETING**
- **6(B)(2) MINUTES: TIMELY ADOPTED UNDER THE CIRCUMSTANCES**
- **7(F) ACKNOWLEDGEMENT OF VIOLATION: PUBLIC BODIES REQUIRED TO ACKNOWLEDGE OPINION IN TWO WAYS**

***Topic numbers and headings correspond to those in the Opinions Index (2014 edition) at** http://www.oag.state.md.us/Opengov/Openmeetings/OMCB_Topical_Index.pdf

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January 21, 2016

Re: Heroin and Opioid Emergency Task Force
Michele J. Fluss, *Complainant*

In her third complaint regarding the Heroin and Opioid Emergency Task Force, a now-defunct public body, Complainant Michele J. Fluss alleges that the Task Force violated the Open Meetings Act by not adopting minutes in a timely manner, by not posting meeting notices reasonably in advance of the meetings, by not holding truly "open" meetings, by failing to announce at its September 2, 2015 meeting the violations we found in 9 *OMCB Opinions* 268 (2015), and by failing to submit to us a signed copy of that opinion. As in her earlier complaints, Complainant has also included allegations that do not involve any requirement in the Act. The Task Force's counsel has responded. Complainant submitted a rebuttal.

We will address the allegations in summary fashion; giving this disbanded entity detailed advice about the Act is not likely to be fruitful because it was not part of a larger public body that might benefit from the advice, and the response reflects the Task Force counsel's understanding of the requirements of the Act. We will not address the allegations that do not assert violations of the Act.

1. Notice. Complainant alleges that the Task Force did not provide the requisite "reasonable advance notice" for three meetings. § 3-302(a).[1] The response states that Task Force staff provided Complainant with notice of its meetings and that two of the meeting times were announced during the preceding meeting and in the minutes of those meetings. Nonetheless, one meeting notice was mistakenly posted in the wrong place, one meeting notice was posted the day before a meeting, and one was posted the day of the meeting. The response properly concedes that notice was belated. We find that the Task Force violated the Act by not giving notice to the public reasonably in advance.

2. Access to meeting space. Complainant describes the security procedures in the State building where the Task Force met. We cannot tell whether she intended to allege that public bodies may not meet in buildings to which access is controlled. At any rate, we have not read the Act to mean that members of public bodies should have less protection than that which is routinely accorded to the government employees and property in public buildings. 9 *OMCB Opinions* 296, 298-99 (2015).

3. Adoption of minutes. Complainant alleges that the Task Force did not post five sets of minutes in a timely fashion. The Act requires that written minutes be prepared "as soon as practicable" after the meeting. § 3-306(b).[2] The four sets of minutes from the Task Force's "regional summits" were adopted approximately two to four months after the meetings. The response explains the time constraints under which the Task Force worked and the facts that it had no staff of its own and that the summits were long hearings at which members of the public testified about their experiences. We are in no position to declare that the Task Force could have "practicably" adopted those minutes sooner.

As to the fifth set of minutes, those for the September 30 meeting, we find that the Task Force complied with the Act by adopting them on November 4. A five-week lag time is not necessarily unreasonable for a public body that does not meet on a regular basis, and it was not unreasonable under the circumstances presented here. The Task Force's draft minutes for the September 30 meeting contain extensive detail, including information on the questions posed to individual speakers, and they went far beyond the minimal requirements set by the Act. Task Force staff posted that draft online by October 21 and drew Complainant's attention to it, and the Task Force

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[1] Except as noted, statutory citations are to the General Provisions Article of the Maryland Annotated Code (2014). For a summary of the Act's notice requirements, see 9 *OMCB Opinions* 103, 105-06 (2014).

[2] For an explanation of the "as soon as practicable" standard, see 8 *OMCB Opinions* 180 (2014).

later adopted the draft as its minutes without discussion. A much easier route for staff would have been to quickly present for adoption a draft set of minutes that contained only the information required by the Act: items considered, actions taken, votes that were recorded. § 3-306(c). Such minutes, for this advisory group, would have contained far less information than the draft minutes, and, though technically compliant with the Act, would not have served the public as well. We think it unfortunate that complaints such as this one might motivate public bodies to take the easier route. We again urge this complainant to focus her Open Meetings Act complaints on conduct that actually interferes with the public's access to information about public business and to consider, before alleging a violation, whether the particular conduct in fact thwarted the purposes of the Act.

We add some guidance on how a public body that is temporary in nature might make arrangements for the adoption of the minutes of its last meeting. Depending on the law that governs the particular public body, the public body may wish to consider deferring its dissolution until the date on which its meeting minutes are approved and then approving its minutes outside of the context of a meeting. For example, under these circumstances, the public body could approve, or authorize its chair to approve, the minutes after a draft has been sent to the members for comment. *See, e.g., 8 OMCB Opinions* 176 (2013).

4. Acknowledgment of our earlier opinion. The Act requires a public body to acknowledge in two ways our issuance of an opinion that it has violated the Act. First, a member of the public body must summarize our opinion at its next public meeting, and, second, a majority of the public body's members must sign a copy of the opinion and send it to us. § 3-211. Here, Task Force staff summarized the opinion at its second public meeting after we issued the opinion, and, after a member questioned the need for individual members' signatures, the opinion was not signed and returned to us. Obviously, these facts do not establish compliance with § 3-211. Even so, this is not a case in which the counsel or staff who handled the public body's response to the complaint failed to inform the members that we found a violation.

In conclusion, we find that this now-defunct task force violated the Act by failing to publish notice of its meetings sufficiently in advance and failing to comply with § 3-211. The other conduct alleged either did not violate the Act or was irrelevant to the requirements of the Act.

Open Meetings Compliance Board

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